APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,675	12/31/2003	Randall J. Macbeth	MFCP.110230	2766

45809   7590   03/31/2008
SHOOK, HARDY & BACON L.L.P.
(c/o MICROSOFT CORPORATION)
INTELLECTUAL PROPERTY DEPARTMENT
2555 GRAND BOULEVARD
KANSAS CITY, MO 64108-2613

EXAMINER
MADAMBA, GLENFORD J

ART UNIT	PAPER NUMBER
2151	

MAIL DATE	DELIVERY MODE
03/31/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	10/748,675	MACBETH ET AL.
	Examiner	Art Unit
	Glenford Madamba	2151

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>28 January 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires <u>6</u> months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

   <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/John Follansbee/
Supervisory Patent Examiner, Art Unit 2151

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's argumens submitted after final have been fully considered but are deemed unpersuasive to overcome the rejection of the claims in view of the Yang and Barth prior art references. With regards to independent claims 1-4, 8-16, 20-28 and 32-36, Applicant argues that the combination of Yang and Barth does not teach or disclose the recited features of the claims, which recites in part, "dynamically adjusting the set of features based on a fault condition detected in the network status data by deactivating the one or more features having a fault condition while maintaining active features in the set of features to continue to provide the networked computer service." In support of his argument, Applicant remarks that unlike the present application, Yang discloses a zero-loss web service system which maintains a service without 'any loss' of the service, and this is in contrast with claim 1 which Applicant asserts is not a zero-loss system. The Office respectfully disagrees and submits that Applicant has misinterpreted and/or not fully considered all the teachings and dislcosures of the prior art reference(s) used in the rejection of the claims.

In response to Applicant's argument, the Office firstly remarks that there is nothing in the language of the claim to preclude or disallow the disclosed embodiment of an absolute "zero-loss" service computer system. The only thing that is required by the claim recitation is that there be no substantial depreciation or degradation in 'service' peformance provided to a user as a result of the detection of a fault / failure condition by the networked computer service, and subsequent 'dynamic adjustment of the set of features' (i.e., 'deactivation' of the one or more features) to continue to provide network computer service. As noted by Applicant himself in his own description of the present application / invention, the invention is directed towards "a platform to monitor the overall performance and other operation of a computer network service and to automatically deactivate or reroute defaulted services or connections to preserve service responsiveness." [0003]. Further, Applicant himself clarifies that "the service support platform of the invention on the other hand may monitor the computer serices network and detect the occurrence of a failure or performance lag, and temporarily detach the faulted server or other resource from the larger network service. In one embodiment, a user's Web page may be adapted to omit a panel of information related to that suspended service or component, so that for example an icon for a travel map or hotel reservation tool may be grayed out or removed while still presenting the remainder of the services or options. Users may therefore still access the majority of the web service they are attempting to use, without interruption or noticeable lag. [Abstract].

In this regard, the Office maintains and asserts that the above same features are likewise disclosed by Yang and/or Barth. With regards to the first embodiment, Yang expressly similarly discloses an embodiment wherein a server cluster web service system dispatches requests by the clients to a corresponding one of the servers in the cluster and/or migrates the requests to another server in the event or occurrence that the corresponding server suffers a 'service failure'. [Abstract] [Fig. 1] [0008] [0010- 0014] [0020] [0025] [0034] [also Claim 1, pg. 6]. With regards to the latter embodiment, Barth expressly discloses the recited feature of dynamically adjusting the set of features by deactivating the one or more features having a fault condition while maintaining active features in the set of features to continue to provide the networked computer service [0009-0013] [0028-0033] [0089-0090] (i.e., 'deactivating' electronic links {URLS} and/or purchasing controls or feature of the resultant display)[0112-0113] [Figs. 2-5) to allow the user to continue with the search / purchasing web session. The argued features are thus expressly disclosed by the Yang and/or Barth prior art references, and the Office accordingly maintains its rejection of the claims in view of the above disclosures and teachings. Claims 5-6, 17-18, and 29-30 are depending from their respective independent claims, inheriting all the features of the parent claims, and also stand rejected for at least the same reasons provided for their independent parent claims.